

COUNCIL PROCEEDINGS

December 6, 2011

1. CALL TO ORDER AND ROLL CALL

Mayor Appelbaum called the regular December 6, 2011 City Council meeting to order at 6:00 p.m. in Council Chambers.

Those present were: Mayor Appelbaum and Council Members Ageton, Becker, Cowles, Jones, Karakehian, Morzel, Plass and Wilson.

A. BOULDERREADS! OUTSTANDING ADULT LEARNER AWARD RECOGNITION BEFORE CITY COUNCIL, HONORING SUINYA MINDIOLA.

2. OPEN COMMENT and COUNCIL/STAFF RESPONSE

- 1) Andrew Rose, Runs Boulder Emotionally Well Clinic – spoke to the homeless issue in Boulder.
- 2) Susan Hall – Spoke to Occupy Boulder’s mission and the “Boulder Philosophy” being similar.
- 3) Judy Kittson – US Forest Service located at 2140 Yarmouth Ave. is requesting council to direct Planning Board to consider an out-of-city water tap. She submitted a formal request from the USDA.
- 4) Cliff Smedley – re: Occupy Boulder and the type of local changes that could be made.
- 5) Lee Buchsbaum – spoke to homelessness in Boulder – supported the Housing First proposal.
- 6) Margaret Porter – North Boulder resident – requested a commitment to the North Boulder Subcommunity Plan from Violet to US 36.
- 7) Janet Salimons – Boulder Arts Commission re: Art Grants. Thanked council for its continued support of the Arts programs.
- 8) Seth Brigham – spoke about Occupy Boulder and homeless issues.
- 9) Bill Hussey – representing North Boulder Alliance, submitted a petition in opposition to BHP Lee Hill long term care facility containing 543 signatures.
- 10) Leslie Glustrum – re: Xcel energy, fuel costs and other documents obtained through a open records request.
- 11) Placida Delgado – Homeless person addressing the impacts of the no camping law.
- 12) Steve Keenan – urged council to support Occupy Boulder. Also spoke to genetically modified Crops (GMC) being grown in Open Space jointly owned by Boulder County and the city.
- 13) Andrew Johnson – President of Gears, Inc., a young men’s community improvement organization (non-profit) looking to extend helping hands to the community.
- 14) Janet Heimer – North Boulder resident in support of the Boulder Housing Partner’s proposal for a chronically homeless facility.
- 15) Cindy Nesspan – 20 year resident spoke to the need to address low income residents and the homeless in Boulder.
- 16) Simon Mustoff – requested that Boulder repeal the anti-camping ordinance.
- 17) Elan Sherman – teacher (BVSD), small business owner, and father – very concerned about the world. Asked that Boulder treat those involved with Occupy Boulder with respect for their first amendment rights.

Staff Response -

None

Council Response -

Council Member Morzel indicated that one of her goal suggestions for this council would include addressing the North Boulder Sub-community Plan.

3. **CONSENT AGENDA:** (to include first reading of ordinances) Vote to be taken on the motion at this time. (Roll call vote required.) 6:50 p.m.

- A. **CONSIDERATION OF A MOTION TO APPROVE THE NOVEMBER 8, 2011 COUNCIL MEETING MINUTES.**
- B. **CONSIDERATION OF A MOTION TO APPROVE THE NOVEMBER 15, 2011 A.M. COUNCIL MEETING MINUTES.**
- C. **CONSIDERATION OF A MOTION TO APPROVE THE NOVEMBER 15, 2011 P.M. COUNCIL MEETING MINUTES.**
- D. **CONSIDERATION OF A MOTION TO ACCEPT THE SUMMARY OF THE OCTOBER 11, 2011 CITY COUNCIL STUDY SESSION REGARDING THE UPDATE TO THE ZERO WASTE MASTER PLAN.**
- E. **CONSIDERATION OF A MOTION TO APPROVE AN OPTION AND LAND LEASE AGREEMENT WITH NEW CINGULAR WIRELESS PCS TO BUILD AN ADDITION TO AND LEASE A PORTION OF THE ADDITION AT CITY OF BOULDER FIRE STATION NUMBER 5 FOR PLACEMENT OF A TELECOMMUNICATIONS FACILITY ON THE PROPERTY.**
- F. **CONSIDERATION OF A MOTION TO APPROVE AN AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN JEFFERSON COUNTY, BOULDER COUNTY AND THE CITY OF BOULDER REGARDING THE ACQUISITION OF SECTION 16.**

This item was removed from the agenda as an amendment was not required.

- G. **CONSIDERATION OF A MOTION TO ADOPT A RESOLUTION DECLARING THE CITY OF BOULDER'S OFFICIAL INTENT TO REIMBURSE ITSELF WITH THE PROCEEDS OF A FUTURE BOND ISSUE THAT WILL OCCUR IN THE FIRST QUARTER OF 2012.**
- H. **SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7823 APPROVING SUPPLEMENTAL APPROPRIATIONS TO THE 2011 BUDGET; AND**

CONSIDERATION OF A MOTION TO ADJOURN FROM THE BOULDER CITY COUNCIL AND CONVENE AS THE DOWNTOWN COMMERCIAL DISTRICT (DCD) BOARD OF DIRECTORS.

- I. **CONSIDERATION OF A RESOLUTION AMENDING THE 2011 DOWNTOWN COMMERCIAL DISTRICT (DCD) FUND (FORMERLY CAGID FUND) BUDGET; AND**

CONSIDERATION OF A MOTION TO ADJOURN FROM THE DOWNTOWN COMMERCIAL DISTRICT (DCD) BOARD OF DIRECTORS AND CONVENE AS THE BOULDER JUNCTION ACCESS COMMISSION GENERAL IMPROVEMENT DISTRICT PARKING BOARD OF DIRECTORS.

- J. **CONSIDERATION OF A RESOLUTION AMENDING THE 2011 BOULDER JUNCTION ACCESS COMMISSION GENERAL IMPROVEMENT DISTRICT – PARKING FUND BUDGET; AND**

CONSIDERATION OF A MOTION TO ADJOURN FROM THE BOULDER JUNCTION ACCESS COMMISSION GENERAL IMPROVEMENT DISTRICT PARKING BOARD OF DIRECTORS AND RECONVENE AS THE BOULDER CITY COUNCIL.

- K. **SECOND READING AND CONSIDERATION OF EMERGENCY ORDINANCE NO. 7822 ADOPTING SUPPLEMENT NO. 110, WHICH CODIFIES PREVIOUSLY ADOPTED ORDINANCE NOS. 7795, 7809, 7813, AND 7814 AND OTHER MISCELLANEOUS CORRECTIONS AND AMENDMENTS, AS AN AMENDMENT TO THE BOULDER REVISED CODE, 1981.**

- L. Introduction, **first reading** and consideration of a motion to order published by title only an **ordinance** amending Section 2-3-11, “Planning Board,” B.R.C. 1981, **to allow for appointment of temporary alternates to the Planning Board** due to an appearance of impropriety or a conflict of interest under Chapter 2-7, “Code of Conduct,” B.R.C. 1981, or an anticipated absence, and setting forth related details.

This item was pulled by Council Member Ageton and rescheduled as item 5C.

- M. **INTRODUCTION, FIRST READING, AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN ORDINANCE AMENDING TITLE 3, “REVENUE AND TAXATION,” B.R.C. 1981, TO CLARIFY THE DEFINITION OF “TAXABLE SERVICES” WITH RESPECT TO DOWNLOADED SOFTWARE AND ON-LINE DATA BASES.**

- N. **INTRODUCTION, FIRST READING, AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN ORDINANCE AUTHORIZING AND DIRECTING THE ACQUISITION OF PROPERTY INTERESTS LOCATED AT 5864 RUSTIC KNOLLS DR., BY PURCHASE OR EMINENT DOMAIN PROCEEDINGS.**

Council Member Cowles moved, seconded by Council Member Becker to approve consent agenda items 3A – 3N, with 3F removed and 3L pulled and rescheduled as item 5C. The motion carried 9:0 , with Council Members Plass and Jones abstaining from items 3A and 3D. Vote taken at 6:55p.m.

4. **POTENTIAL CALL- UP CHECK IN:** Opportunity for Council to indicate possible interest in the call- up of an item listed under agenda Item 8-A1.

No interest was expressed in calling up this item.

ORDER OF BUSINESS

5. **PUBLIC HEARINGS:**

- A. **SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT EMERGENCY ORDINANCE NO. 7825 CONCERNING THE UTILITY OCCUPATION TAX, EXTENDING AND INCREASING THE TAX RATE UP TO AN ADDITIONAL \$1.9 MILLION, AND MAKING THE ADDITIONAL FUNDS AVAILABLE TO SUPPORT LOCAL GOVERNMENT SERVICES AND TO FUND THE COSTS OF FURTHER EXPLORATION OF AND PLANNING FOR BOTH THE CREATION OF A MUNICIPAL ELECTRIC UTILITY AND ACQUIRING AN EXISTING ELECTRIC DISTRIBUTION SYSTEM, AS APPROVED BY THE VOTERS IN THE NOV. 1, 2011 GENERAL MUNICIPAL ELECTION, BY THE REVISION OF CHAPTER 3-13 "UTILITY OCCUPATION TAX," B.R.C. 1981, AND SETTING FORTH RELATED DETAILS. 7:00 P.M.**

There being no speakers the public hearing was closed.

Council Member Morzel moved, seconded by Council Members Cowles, to adopt Ordinance No. 7825, amending it by adding a new section 3-13-9(a) and (b) as set forth on page four of the agenda memo.

Council Member Cowles offered a friendly amendment to delete "TO SUPPORT LOCAL GOVERNMENT SERVICES" in line four and five of the Ordinance title to be consistent with the main motion. The friendly amendment was accepted.

Vote was taken on the main motion to adopt Ordinance No. 7825 by Emergency as amended to include a new section 3-13-9(a) and (b) and the deletion of five words on lines four and five of the Ordinance Title. The motion carried 9:0. Vote taken at 7:05 p.m.

- B. **SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7826 AMENDING TITLE 9, LAND USE CODE B.R.C. 1981, REGARDING DEFINITIONS AND USE STANDARDS FOR BREWERIES, BREWPUBS, DISTILLERIES AND WINERIES.**

Due to the number of speakers, the public hearing was limited to two minutes per person. 7:08 p.m.

After the staff presentation, Aaron Brockett from Planning Board and David Zessin from the Beverages Licensing Authority provided input from those Boards.

The public hearing was opened:

- 1) Eric Shannon – voiced opposition to a Land Use amendment.
- 2) Steve Breezley – Spoke in favor of the drafted change.
- 3) Adam Avery – also spoke in favor of the Land Use change, he then commented that that Avery Brewery had not had a single police call in its 10 year history.
- 4) Patrick Perrin – expressed that Site Review would solve the issues and was already in place. Supported the proposed change with the caveat that a change should be discretionary.
- 5) Peter Weber – Architect with Coburn - provide a slide show of the progression of changes made in order to satisfy Boulder Country Day school. Also demonstrated the numerous ways to measure the potential 500 foot requirement.
- 6) Clif Harald – Chair of the Boulder Economic Council - voiced support for the proposed code changes suggesting that this type of change is needed in order to foster economic diversification.
- 7) Mac Bowyer – parent of students at Boulder Country Day voiced concerns about the patron who leaves the brewery after a long lunch and runs over a student. Asked council to impose the 500 foot limit.
- 8) Eugenie Holbrook – Parent also concerned about the potential risk to the children who attend Boulder Country Day. Requested that council support the 500 foot limit between any school and any establishment that serves alcohol.
- 9) Mike Shields – head of Boulder Country Day school, stressed that from day one Boulder Country Day was not about killing the project, but rather, it simply asked for the 500 foot limit to be imposed. If that didn't happen, he expressed that the school's business would be affected.
- 10) Jon Wittemyer – Parent and Developer, expressed that site review defaults back to zoning and indicated that allowing alcohol to be served next to a school is just poor policy by the city.
- 11) Susan Brooker – Noted that there were a large number of Boulder Country School parents present that did not understand how alcohol could be allowed next to a school.
- 12) Rick Johnson – Attorney representing Boulder Country Day submitted an eight page position paper and recommended that council either send this item back to the Beverages Licensing Authority or impose the 500 foot limit.
- 13) Michael Schonbrun - agreed with comments from Mr. Johnson, expressed opposition to the proposed ordinance.
- 14) Joe Brooker - as head of Boulder Country Day (BCD) school addressed the two issues he and Mike Shields raised in discussions with Avery Brewery. First was the 500 foot setback and the second was full access off of 63rd. He indicated those two items were deal breakers for both parties. He spoke in opposition to both the process and its outcome. He also provided an alternative for consideration.
- 15) Brad Bickham – as a parent of two BCD students clarified that there was no ill will against Avery Brewery, it was just the principle of having a bar across the street from a school.
- 16) Jay Orris – also parent of (BCD) students provided a transcript from the Beverages Licensing Authority and read various aspects that raised questions that he thought were significant enough to delay taking action on the matter.
- 17) Jennifer Jones – stated that Avery should be held to the same standards that all other liquor establishments were held to. This will open the door to numerous

establishments that will not be held to the regulations of regular full service restaurants.

- 18) Frank Bergen – An advocate of Avery and also a BCD parent, pointed out that Tap rooms are destinations to drink. He urged controlling hours of operations and supported the 500 foot setback.
- 19) Lee Quinby – informed the council that he was the Executive Director of Colorado Independent Schools which accredits BCD and asked that council consider how this change would impact schools. He suggested delaying the issue to allow time for the State to close the loophole of unregulated drinking establishments.
- 20) Elizabeth Stark – attorney and professor of Business Ethics at University of Colorado. She expressed that the proposal was a direct violation of basic business ethics as well as numerous other violations.
- 21) Jackie Noe – a parent concerned about the affects of underage drinking. Was 500 feet far enough away? She thought not.

Council Member Cowles moved, seconded by Council Member Plass to adopt Ordinance No. 7826 as presented on page three of the agenda memo. The motion carried, 9:0. Vote was taken at 9:50 p.m.

C. **INTRODUCTION, FIRST READING AND CONSIDERATION OF A MOTION TO ORDER PUBLISHED BY TITLE ONLY AN ORDINANCE AMENDING SECTION 2-3-11, “PLANNING BOARD,” B.R.C. 1981, TO ALLOW FOR APPOINTMENT OF TEMPORARY ALTERNATES TO THE PLANNING BOARD DUE TO AN APPEARANCE OF IMPROPRIETY OR A CONFLICT OF INTEREST UNDER CHAPTER 2-7, “CODE OF CONDUCT,” B.R.C. 1981, OR AN ANTICIPATED ABSENCE, AND SETTING FORTH RELATED DETAILS.**

After council discussion the following motion was made:

Council Member Morzel moved, seconded by Council Member Ageton, to introduce and order published by title only Ordinance No. 7827 amending Section 2-3-11, “Planning Board,” B.R.C. 1981, to allow for appointment of temporary alternates to the Planning Board due to an appearance of impropriety or a conflict of interest under Chapter 2-7, “Code of Conduct,” B.R.C. 1981, or an anticipated absence, and setting forth related details. Vote was taken at 10:10 p.m.

6. **MATTERS FROM THE CITY MANAGER:** None.

7. **MATTERS FROM THE CITY ATTORNEY:**

The City Attorney raised an issue related to having an appointed member of the Landmarks Preservation Advisory Board representing a client who is suing the city. He clarified that the law suit was not related to actions Mr. Spitzer would take as a board member but requires permission from the council to represent his client.

Council Member Becker moved, seconded by Council Jones, to allow Landmarks Preservation Advisory Board Member John Spitzer represent the Rubins in a law suit

against the city.

8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL:**

- A. **POTENTIAL CALL-UP: VACATION OF A 2,876 SQUARE FOOT PORTION OF AN EXISTING UTILITY EASEMENT AT 6350 GUNPARK DR. FOR A RELOCATED WATER LINE (ADR2011-00197). LAST OPPORTUNITY FOR CALL-UP IS DECEMBER 6, 2011.**

No action was taken on this item.

- B. **CONSIDERATION OF A MOTION CALLING FOR A STUDY SESSION THE WEEK OF DECEMBER 12 TO DISCUSS REGIONAL COUNCIL COMMITTEE APPOINTMENTS.**

After reviewing the results of the council poll, it was determined that the study session to discuss council committee appointments would be held on December 14 at 5:00 p.m.

9. **PUBLIC COMMENT ON MATTERS:** - None

10. **FINAL DECISIONS ON MATTERS:** Action on motions made under Matters.

Vote was taken on the motion to allow Landmarks Preservation Advisory Board Member John Spitzer represent the Rubins in a law suit against the city. The motion carried 7:0 with members Cowles and Morzel recused. The vote was taken at 10:36 p.m.

11. **ADJOURNMENT**

There being no further business to come before Council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED AT 10:40 P.M.

APPROVED BY:


Matthew Appelbaum,
Mayor

ATTEST:


Alisa D. Lewis,
City Clerk